

ASSEMBLY BILL

No. 7

Introduced by Assembly Member Richman

December 5, 2003

An act to repeal Section 5814.5 of, and to repeal and add Section 5814 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 7, as introduced, Richman. Workers' compensation.

Existing law provides that when payment of compensation has been unreasonably delayed or refused, the full amount of the order, decision, or award is to be increased by 10%. Existing law requires the Workers' Compensation Appeals Board to determine the question of delay and reasonableness and to award reasonable attorney's fees incurred in enforcing the payment of compensation awarded.

This bill would repeal these provisions. The bill, instead, would prescribe procedures under which, when the payment of compensation has been unreasonably delayed or refused, the amount of the payment unreasonably delayed or refused may be increased up to 20% or \$500, whichever is greater. The bill would require the appeals board to use its discretion in order to accomplish fair balance and substantial justice between the parties under these proceedings.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5814 of the Labor Code is repealed.
2

1 ~~5814. When payment of compensation has been unreasonably~~
2 ~~delayed or refused, either prior to or subsequent to the issuance of~~
3 ~~an award, the full amount of the order, decision, or award shall be~~
4 ~~increased by 10 percent. Multiple increases shall not be awarded~~
5 ~~for repeated delays in making a series of payments due for the same~~
6 ~~type or specie of benefit unless there has been a legally significant~~
7 ~~event between the delay and the subsequent delay in payments of~~
8 ~~the same type or specie of benefits. The question of delay and the~~
9 ~~reasonableness of the cause therefor shall be determined by the~~
10 ~~appeals board in accordance with the facts. This delay or refusal~~
11 ~~shall constitute good cause under Section 5803 to rescind, alter, or~~
12 ~~amend the order, decision, or award for the purpose of making the~~
13 ~~increase provided for herein.~~

14 SEC. 2. Section 5814 is added to the Labor Code, to read:

15 5814. (a) When payment of compensation has been
16 unreasonably delayed or refused, either prior to or subsequent to
17 the issuance of an award, the amount of the payment unreasonably
18 delayed or refused may be increased up to 20 percent or up to five
19 hundred dollars (\$500), whichever is greater. In proceeding under
20 this section, the appeals board shall use its discretion to accomplish
21 a fair balance and substantial justice between the parties.

22 (b) As a precondition to a claim for penalties under this section,
23 the employee shall give written notice to the employer of the
24 claimed unreasonable delay or refusal of payment of
25 compensation. If, within 30 days from the date of services of this
26 notice, the employer pays a self-imposed increase of 10 percent of
27 the amount of payment delayed or refused, in addition to any other
28 self-imposed increases due under this division, there shall be no
29 further penalty allowed under this section. If the employer disputes
30 whether the delay or refusal is unreasonable, and the workers'
31 compensation administrative law judge determines that the delay
32 or refusal violates this section, the workers' compensation
33 administrative law judge shall award the penalty prescribed in
34 subdivision (a). In determining whether the delay or refusal is
35 unreasonable, the workers' compensation administrative law
36 judge shall consider only the specific facts resulting in the delay
37 or refusal of the specific payment that is the subject of the request
38 for penalties.

39 (c) The appeals board shall have no jurisdiction to hear a claim
40 for penalties under subdivision (a), unless the employee files a

1 claim for a penalty within one year from the date of the alleged
2 unreasonable delay or refusal to pay benefits. Upon the approval
3 of a compromise and release by the appeals board, it shall be
4 conclusively presumed that any existing or potential penalties
5 have been resolved, unless expressly excluded by the terms of the
6 compromise and release.

7 (d) When a penalty is awarded under subdivision (a), the
8 appeals board may allow a credit for any payment pursuant to a
9 salary continuation plan under subdivision (d) of Section 4650 or
10 self-imposed increase under subdivision (b), in order to
11 accomplish a fair balance and substantial justice between the
12 parties.

13 (e) Nothing in this section shall be construed to create a civil
14 cause of action.

15 SEC. 3. Section 5814.5 of the Labor Code is repealed.

16 ~~5814.5. When the payment of compensation has been~~
17 ~~unreasonably delayed or refused subsequent to the issuance of an~~
18 ~~award by an employer that has secured the payment of~~
19 ~~compensation pursuant to Section 3700, the appeals board shall,~~
20 ~~in addition to increasing the order, decision, or award pursuant to~~
21 ~~Section 5814, award reasonable attorneys' fees incurred in~~
22 ~~enforcing the payment of compensation awarded.~~

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